

REFERENCE TITLE: property deeds; foreclosures; identification

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1275

Introduced by
Senator Gray L

AN ACT

AMENDING SECTIONS 12-1286, 33-401, 33-809 AND 33-811, ARIZONA REVISED
STATUTES; RELATING TO TRANSFERS OF REAL PROPERTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-1286, Arizona Revised Statutes, is amended to
3 read:

4 12-1286. Execution and recording of deed by sheriff

5 A. At the expiration of all the applicable periods of redemption as
6 provided in section 12-1282, and not sooner, the sheriff shall execute ~~and~~
7 ~~deliver~~ a deed to the property sold to the purchaser at the sale, or in case
8 redemption is made by a redemptioner, ~~then~~ to the last redemptioner redeeming
9 the property.

10 B. WITHIN TEN DAYS AFTER THE DATE OF EXECUTION OF THE DEED, THE
11 SHERIFF SHALL RECORD THE SHERIFF'S DEED IN THE OFFICE OF THE COUNTY RECORDER
12 FOR THE COUNTY IN WHICH THE PROPERTY IS LOCATED. IN EVERY SHERIFF'S DEED IN
13 WHICH THE GRANTEE, PURCHASER OR REDEMPTIONER IS SUBJECT TO REGULATION
14 PURSUANT TO TITLE 6, 10 OR 29, OR WOULD BE SUBJECT TO REGULATION PURSUANT TO
15 TITLE 6, 10 OR 29 IF DOING BUSINESS IN THIS STATE, THE GRANTEE'S, PURCHASER'S
16 OR REDEMPTIONER'S NAME AND ADDRESS AND THE STATE IN WHICH THE GRANTEE,
17 PURCHASER OR REDEMPTIONER IS INCORPORATED, ORGANIZED, LICENSED, CHARTERED OR
18 REGISTERED SHALL BE SET FORTH FULLY IN THE DEED, TOGETHER WITH THE NAME OF
19 THE COUNTRY UNDER WHICH THE GRANTEE, PURCHASER OR REDEMPTIONER IS CHARTERED
20 OR FORMED.

21 Sec. 2. Section 33-401, Arizona Revised Statutes, is amended to read:

22 33-401. Formal requirements of conveyance; writing;
23 subscription; delivery; acknowledgment; defects

24 A. No estate of inheritance, freehold, or for a term of more than one
25 year, in lands or tenements, shall be conveyed unless the conveyance is by an
26 instrument in writing, subscribed and delivered by the party disposing of the
27 estate, or by his agent thereunto authorized by writing.

28 B. Every deed or conveyance of real property must be signed by the
29 grantor and must be duly acknowledged before some officer authorized to take
30 acknowledgments.

31 C. IN EVERY DEED OR CONVEYANCE OF REAL PROPERTY IN WHICH THE GRANTEE
32 IS SUBJECT TO REGULATION PURSUANT TO TITLE 6, 10 OR 29, OR WOULD BE SUBJECT
33 TO REGULATION PURSUANT TO TITLE 6, 10 OR 29 IF DOING BUSINESS IN THIS STATE,
34 THE GRANTEE'S NAME AND ADDRESS AND THE STATE IN WHICH THE GRANTEE IS
35 INCORPORATED, ORGANIZED, LICENSED, CHARTERED OR REGISTERED SHALL BE SET FORTH
36 FULLY IN THE DEED, TOGETHER WITH THE NAME OF THE COUNTRY UNDER WHICH THE
37 GRANTEE IS CHARTERED OR FORMED.

38 ~~C.~~ D. For purposes of this section, a deed or conveyance containing
39 any defect, omission or informality in the certificate of acknowledgment and
40 which has been recorded for longer than ten years in the office of the county
41 recorder of the county in which the property is located shall be deemed to
42 have been duly acknowledged on and after the date of its recording.

Sec. 3. Section 33-809, Arizona Revised Statutes, is amended to read:
33-809. Request for copies of notice of sale; mailing by
trustee; disclosure of information regarding trustee
sale

A. A person desiring a copy of a notice of sale under a trust deed, at any time subsequent to the recording of the trust deed and prior to the recording of a notice of sale pursuant thereto, shall record in the office of the county recorder in any county in which part of the trust property is situated a duly acknowledged request for a copy of any such notice of sale. The request shall set forth the name and address of the person or persons requesting a copy of such notice and shall identify the trust deed by setting forth the county, docket or book and page of the recording data thereof and by stating the names of the original parties to such deed, the date the deed was recorded and the legal description of the entire trust property and shall be in substantially the following form:

Request for Notice

Request is hereby made that a copy of any notice of sale under the trust deed recorded in docket or book _____ at page _____, records of _____ county, Arizona, _____, _____,

(legal description of trust property)

Executed by _____ as trustor, in which _____ is named as beneficiary and _____ as trustee, be mailed to _____ at _____.

Dated this _____ day of _____, ____.

 Signature

(Acknowledgement)

B. Not later than thirty days after recording the notice of sale, the trustee shall mail by certified or registered mail, with postage prepaid, a copy of the notice of sale that reflects the recording date together with any notice required to be given by subsection C of this section, addressed as follows:

1. To each person whose name and address are set forth in a request for notice, which has been recorded prior to the recording of the notice of sale, directed to the address designated in such request.

2. To each person who, at the time of recording of the notice of sale, appears on the records of the county recorder in the county in which any part of the trust property is situated to have an interest in any of the trust property. The copy of the notice sent pursuant to this paragraph shall be addressed to the person whose interest appears of record at the address set forth in the document. If no address for the person is set forth in the document, the copy of the notice may be addressed in care of the person to whom the recorded document evidencing such interest was directed to be mailed

at the time of its recording or to any other address of the person known or ascertained by the trustee. If the interest that appears on the records of the county recorder is a deed of trust, a copy of the notice only needs to be mailed to the beneficiary under the deed of trust. If any person having an interest of record or the trustor, or any person who has recorded a request for notice, desires to change the address to which notice shall be mailed, the change shall be accomplished by a request as provided under this section.

3. TO THE ADDRESS OF THE TRUST PROPERTY, ADDRESSED TO "RESIDENT OR OCCUPANT".

C. The trustee, within five business days after the recordation of a notice of sale, shall mail by certified or registered mail, with postage prepaid, a copy of the notice of sale to each of the persons who were parties to the trust deed except the trustee. The copy of the notice mailed to the parties need not show the recording date of the notice. The notice sent pursuant to this subsection shall be addressed to the mailing address specified in the trust deed. In addition, notice to each party shall contain a statement that a breach or nonperformance of the trust deed or the contract or contracts secured by the trust deed, or both, has occurred, and setting forth the nature of such breach or nonperformance and of the beneficiary's election to sell or cause to be sold the trust property under the trust deed and the additional notice shall be signed by the beneficiary or the beneficiary's agent. A copy of the additional notice shall also be sent with the notice provided for in subsection B, paragraph 2 of this section to all persons whose interest in the trust property is subordinate in priority to that of the deed of trust along with a written statement that the interest may be subject to being terminated by the trustee's sale. The written statement may be contained in the statement of breach or nonperformance.

D. No request for a copy of a notice recorded pursuant to this section, nor any statement or allegation in any request, nor any record of request, shall affect the title to the trust property or be deemed notice to any person that a person requesting a copy of notice of sale has or claims any interest in, or claim upon, the trust property.

E. At any time that the trust deed is subject to reinstatement pursuant to section 33-813, but not sooner than thirty days after recordation of the notice of trustee's sale, the trustee shall upon receipt of a written request, provide, if actually known to the trustee, the following information relating to the trustee's sale and the trust property:

1. The unpaid principal balance of the note or other obligation which is secured by the deed of trust.

2. The name and address of record of the owner of the trust property as of the date of recordation of the notice of trustee's sale.

3. A list of the liens and encumbrances upon the trust property as of the date of recordation of the notice of trustee's sale, excluding those matters set forth in section 33-438, subsection A.

1 If the trustee elects to charge a fee for providing the information
2 requested, the fee shall not exceed five per cent of the amount the trustee
3 may charge pursuant to section 33-813, subsection B, paragraph 4, except that
4 the trustee shall not charge a fee that is more than one hundred dollars or
5 be required to accept a fee that is less than thirty dollars but may accept a
6 lesser fee at the trustee's discretion. The trustee, or any other person
7 furnishing information pursuant to this subsection to the trustee, shall not
8 be subject to liability for any error or omission in providing the
9 information requested, except for the wilful and intentional failure to
10 provide information in the trustee's actual possession.

11 F. Beginning at 9:00 a.m. and continuing until 5:00 p.m. mountain
12 standard time on the last business day preceding the day of sale and
13 beginning at 9:00 a.m. mountain standard time and continuing until the time
14 of sale on the day of the sale, the trustee shall make available the actual
15 bid or a good faith estimate of the credit bid the beneficiary is entitled to
16 make at the sale. If the actual bid or good faith estimate is not available
17 during the prescribed time period, the trustee shall postpone the sale until
18 the trustee is able to comply with this subsection.

19 G. In providing information pursuant to subsections E and F of this
20 section, the trustee, without obligation or liability for the accuracy or
21 completeness of the information, may respond to oral requests, respond orally
22 or in writing or provide additional information not required by such
23 subsections. With respect to property that is the subject of a trustee's
24 sale, the beneficiary of such deed of trust or the holder of any prior lien
25 may, but shall not be required to, provide information concerning such deed
26 of trust or any prior lien that is not required by subsection E or F of this
27 section and may charge a reasonable fee for providing the information. The
28 providing of such information by any beneficiary or holder of a prior lien
29 shall be without obligation or liability for the accuracy or completeness of
30 the information.

31 Sec. 4. Section 33-811, Arizona Revised Statutes, is amended to read:

32 33-811. Payment of bid; trustee's deed

33 A. The highest bidder at the sale, other than the beneficiary to the
34 extent of the credit bid, shall pay the price bid by no later than 5:00 p.m.
35 mountain standard time of the following day, other than a Saturday or legal
36 holiday. If the highest bidder fails to pay the amount bid for the property
37 struck off to the bidder at the sale, the trustee, in the trustee's sole
38 discretion, shall either continue the sale to reopen bidding or immediately
39 offer the trust property to the second highest bidder who may purchase the
40 trust property at that bidder's bid price. The deposit of the highest bidder
41 who fails to pay the amount bid shall be forfeited and shall be treated as
42 additional sale proceeds to be applied in accordance with section 33-812,
43 subsection A. If the second highest bidder does not pay that bidder's bid
44 price by 5:00 p.m. mountain standard time of the next day excluding Saturdays
45 and legal holidays after the property has been offered to that bidder by the

1 trustee, the trustee shall either continue the sale to reopen bidding or
2 offer the trust property to each of the prior bidders on successive days
3 excluding Saturdays and legal holidays in order of their highest bid, until a
4 bid price is paid, or if there is no other bidder, the sale shall be deemed
5 to be continued to a time and place designated by the trustee, or if not
6 designated, the sale shall be continued to the same place and at the same
7 time twenty-eight days after the last scheduled sale date. If the
8 twenty-eighth day is a Saturday or legal holiday, the sale shall be continued
9 to the next business day. If the sale is continued, the trustee shall
10 provide notice of the continuation of the sale by registered or certified
11 mail, with postage prepaid, to all bidders who provide their names, addresses
12 and telephone numbers in writing to the party conducting the sale. In
13 addition to the forfeit of deposit, a highest bidder who fails to pay the
14 amount bid by that bidder is liable to any person who suffers loss or
15 expenses as a result, including attorney fees. In any subsequent sale of
16 trust property, the trustee may refuse to accept any bid of that person. In
17 any sale that is continued pursuant to this subsection, the trustee shall
18 reject the bid from any previous bidder who elected not to pay that bidder's
19 bid price.

20 B. The price bid shall be paid at the office of the trustee or the
21 trustee's agent, or any other reasonable place designated by the trustee.
22 The payment of the bid price may be made at a later time if agreed upon in
23 writing by the trustee. The trustee shall execute and deliver the trustee's
24 deed to the purchaser within seven business days after receipt of payment by
25 the trustee or the trustee's agent made in a form that is satisfactory to the
26 trustee.

27 C. IN EVERY TRUSTEE'S DEED IN WHICH THE GRANTEE IS SUBJECT TO
28 REGULATION PURSUANT TO TITLE 6, 10 OR 29, OR WOULD BE SUBJECT TO REGULATION
29 PURSUANT TO TITLE 6, 10 OR 29 IF DOING BUSINESS IN THIS STATE, THE GRANTEE'S
30 NAME AND ADDRESS AND THE STATE IN WHICH THE GRANTEE IS INCORPORATED,
31 ORGANIZED, LICENSED, CHARTERED OR REGISTERED SHALL BE SET FORTH FULLY IN THE
32 DEED, TOGETHER WITH THE NAME OF THE COUNTRY UNDER WHICH THE GRANTEE IS
33 CHARTERED OR FORMED. WITHIN TEN DAYS AFTER THE DATE OF THE TRUSTEE'S SALE,
34 THE TRUSTEE SHALL RECORD THE TRUSTEE'S DEED IN THE OFFICE OF THE COUNTY
35 RECORDER FOR THE COUNTY IN WHICH THE TRUST PROPERTY IS LOCATED.

36 D. The recording of the trustee's deed upon sale may also constitute
37 delivery of the deed to the purchaser. The trustee is not liable for any
38 damages resulting from the failure to record the trustee's deed upon sale
39 after physical delivery of the deed to the purchaser. The trustee's deed
40 shall raise the presumption of compliance with the requirements of the deed
41 of trust and this chapter relating to the exercise of the power of sale and
42 the sale of the trust property, including recording, mailing, publishing and
43 posting of notice of sale and the conduct of the sale. A trustee's deed
44 shall constitute conclusive evidence of the meeting of those requirements in

1 favor of purchasers or encumbrancers for value and without actual notice.
2 Knowledge of the trustee shall not be imputed to the beneficiary.

3 ~~C.~~ E. The trustor, its successors or assigns, and all persons to whom
4 the trustee mails a notice of a sale under a trust deed pursuant to section
5 33-809 shall waive all defenses and objections to the sale not raised in an
6 action that results in the issuance of a court order granting relief pursuant
7 to rule 65, Arizona rules of civil procedure, entered before 5:00 p.m.
8 mountain standard time on the last business day before the scheduled date of
9 the sale. A copy of the order, the application for the order and the
10 complaint shall be delivered to the trustee within twenty-four hours after
11 entering the order.

12 ~~D.~~ F. A sale is not complete if the sale violates subsection ~~C.~~ E of
13 this section because of an undisclosed order entered by the court within the
14 time provided for in subsection ~~C.~~ E of this section. A sale held in
15 violation of subsection ~~C.~~ E of this section shall be continued to a date,
16 time and place announced by the trustee at the sale and shall comply with
17 section 33-810, subsection B. If not announced, the sale shall be continued
18 to the same place and at the same time twenty-eight days later. If the
19 twenty-eighth day falls on a Saturday or ~~other~~ legal holiday, the sale shall
20 be continued to the next business day. If the sale is continued because of
21 an unknown or undisclosed order as provided in this subsection, the trustee
22 shall notify by registered or certified mail, with postage prepaid, all
23 bidders who provide names, addresses and telephone numbers in writing to the
24 party conducting the sale of the continuation of the sale.

25 ~~E.~~ G. The trustee's deed shall operate to convey to the purchaser the
26 title, interest and claim of the trustee, the trustor, the beneficiary, their
27 respective successors in interest and all persons claiming the trust property
28 sold by or through them, including all interest or claim in the trust
29 property acquired subsequent to the recording of the deed of trust and prior
30 to delivery of the trustee's deed. That conveyance shall be absolute without
31 right of redemption and clear of all liens, claims or interests that have a
32 priority subordinate to the deed of trust and shall be subject to all liens,
33 claims or interests that have a priority senior to the deed of trust.